

Master Services Agreement

Last Updated: June 16, 2023

Subject to the terms and conditions of this Master Services Agreement (this “**Agreement**”), PerkCity, Inc., a Delaware corporation d/b/a Nectar HR (“**Company**”), will provide to you (“**Client**” or “**you**”) the services and subscription set forth in the order form delivered by the Company or its authorized sales representative (the “**Services**”).

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU ACCESS THE SERVICES OR COMPLETE YOUR ORDER FORM WITH THE COMPANY. This Agreement is expressly incorporated into the Company’s order form by placement of a link that you can access and review. If you complete an order for the Services—even if you elect not to open the link to this Agreement when available to you—you (A) accept and agree to be bound by this Agreement and (B) represent that you may act on behalf of your organization if you are a representative of the Client who is subscribing to the Services.

1. ACCESS TO THE SERVICES.

1.1 Provision of Access. The Services are provided by the Company to you as a ‘*software-as-a-service*’ subscription, meaning that Client does not have (and will not generally receive) a license to download any aspect of the Services, except as expressly described in this Agreement. Subject to the terms and conditions of this Agreement, the Company hereby grants to Client, during the Services Period, a non-exclusive, non-sublicensable, non-transferable, and revocable right to access and use the Services, solely for use by Client and its Authorized Users (defined below). With respect to any Services that Company chooses to provide through distribution of software that Client and its Authorized Users are required to download on their personal devices (such as computers or smartphones), the Company hereby grants Client a non-exclusive, non-transferable, non-sublicensable, and revocable license to use such downloadable Services during the Services Period, conditioned on Client’s and its Authorized Users’ compliance with this Agreement. For purposes of this Agreement, “**Authorized Users**” means Client’s employees, staff, and personnel (i) who are authorized by Client to access and use the Services under the rights granted to Client pursuant to this Agreement and (ii) for whom access to the Services has been purchased by Client under this Agreement and Client’s order form.

1.2 Availability. During the Services Period, the Services will be generally available to Client and Authorized Users twenty-four (24) hours per day, seven (7) days per week, except during the following circumstances: (i) scheduled downtime for routine or other maintenance, which the Company will communicate to Client in advance; and (ii) during any Services Suspension (described in Section 1.5).

1.3 Support Services. The Services include the Company’s standard support services as set forth in this Section 1.3 (the “**Support Services**”). The Company may amend the Support Services from time to time in its sole discretion by providing fifteen (15) days’ notice to Client.

Support Services may be withheld if Client is in breach of this Agreement, including, without limitation, if Client has outstanding late payments for its Access Fees (defined below). The Support Services include the following commitments on the part of the Company:

(i) The Company will use commercially reasonable efforts during the Services Period, consistent with prevailing industry standards, to maintain the Services in a manner which minimizes errors and interruptions in the Services.

(ii) The Company will assist Client in diagnosing errors and malfunctions of the Services, provided that such errors do not relate to errors or malfunctions on the part of systems, platforms, or Equipment (defined below) beyond the Company's control.

(iii) The Company will exercise its best efforts to correct diagnosed errors and malfunctions of the Services promptly after the Company learns of the potential errors or malfunctions.

(iv) The Company and its support personnel will give general technical assistance and maintenance for the Services during regular business hours, which includes availability at the account manager or sales representative email set forth in Client's order form.

1.4 Use Restrictions. Client may use the Services only for Client's and the Authorized Users' internal business purposes and not for any commercialization by Client. In addition, Client will not, directly or indirectly, and will not permit any Authorized User to: (i) reverse engineer, decompile, copy, mirror, disassemble, or otherwise attempt to discover or reproduce the source code, object code, or underlying structure, feature, ideas, know-how, or algorithms relevant to the Services; (ii) modify, translate, or create derivative works based on the Services; (iii) rent, lease, lend, sell, publish, transfer, or otherwise make available the Services beyond Client's internal use and the access described in this Agreement; (iv) build or create applications, programs, or services that are competitive with the Services; (v) remove any proprietary notices or labels from the Services and its underlying features; (vi) use the Services beyond any usage or access limitations set forth in this Agreement or the order form delivered to Client; (vii) use the Services, including any documentation relating to the Services, in any manner or for any purpose that infringes, misappropriates, or otherwise violates the intellectual property right or other right of any person, or otherwise violates applicable law; or (viii) use the Services to transmit illicit, pornographic, or other material that the Company, in its discretion, deems inappropriate or unwarranted in relation to the purposes of the Services.

1.5 Services Suspension. In connection with the Company's monitoring activities set out in Section 1.6 below, and notwithstanding anything to the contrary in this Agreement, Company may temporarily suspend all or any portion of Client's access to the Services (a "**Services Suspension**") if any of the following occur:

(i) The Company reasonably determines that (A) there is a threat or attack on any of the Services or the Company's intellectual property rights; (B) Client's use of the Services disrupts or poses a security risk to the Company or to any other client or vendor of Company; (C) Client or its Authorized Users are using the Services for fraudulent or illegal activities; or (D) the Company's provision of the Services to Client is prohibited by applicable law.

(ii) Any vendor or third party provider of the Company has suspended or terminated Company's access to or use of any third-party services or products required to enable Client to access the Services.

(iii) Client breaches the terms of this Agreement (including any continued failure to pay Access Fees or Reward Fees under Section 4).

The Company agrees to use commercially reasonable efforts to provide advance written notice of any Services Suspension to Client and to provide updates regarding resumption of access to the Services following any Services Suspension. However, the Company will have no liability for Losses (defined below) that Client may incur as a result of a Service Suspension if such Losses are a result of actions taken by Client or its Authorized Users in breach of this Agreement.

1.6 Monitoring and Control Over Services. So long as the Company does not materially decrease the functionality of Services during the Services Period: (i) the Company retains sole control over the operation, provision, maintenance, monitoring, management, and performance of the Services, including the selection, deployment, modification, and replacement of any software or operational component of the Services, and maintenance, upgrades, corrections or repairs thereof; (ii) the Company reserves the right to make any changes to any component or feature of the Services that it deems necessary or useful to maintain or enhance the quality or delivery of Services to its clients in general (so long as such changes do not materially reduce or adversely impact Client's rights under this Agreement); and (iii) the Company may use necessary third-party resources and service providers to deliver the Services and perform its obligations under this Agreement.

2. CLIENT RESPONSIBILITIES.

2.1 Account Creation. As part of the subscription process for the Services, you may be prompted to identify an administrative username and password for your business account with the Company (the "**Client Account**"). Client shall be solely responsible for maintaining, retaining, and keeping confidential the Client Account information, including username and password (as well as security preferences selected by Client). If you lose access to or information concerning the Client Account, please contact the Company or your designated account manager for assistance. The Company reserves the right to refuse registration of any Client Account or cancel passwords it deems inappropriate under the terms of this Agreement.

2.2 Responsibility for Authorized Users. Client is responsible and liable for all uses of the Services resulting from access provided by Client to its Authorized Users, regardless of whether such access or use is permitted by or in violation of this Agreement. For avoidance of doubt, Client is responsible for all acts and omissions of Authorized Users that may infringe this Agreement (including postings, submissions, and content shared by Authorized Users on the Services platform). Client is responsible for making its Authorized Users aware of this Agreement's provisions to the extent the provisions apply to the Authorized User's access to the Services.

2.3 Client Acknowledgements. Client acknowledges and agrees that Client will use the Services fully in compliance with (i) this Agreement and (ii) all applicable laws and regulations governing the Client's obligations hereunder.

2.4 Equipment Responsibilities. Client is responsible for obtaining and maintaining any equipment, devices, and ancillary services needed to connect to, access, or otherwise use the Services, including, without limitation, operating hardware, modems, servers, software, operating systems, networking, web servers, and other similar components (collectively, "**Equipment**"). Client is also responsible for maintaining the security of the Equipment, and for all uses of the Equipment by Client or its Authorized Users in connection with the Services.

2.5 Third Party Products. Client is responsible for complying with all terms of use for any third-party software, content, service, product, or website it voluntarily loads, creates, or accesses when using the Services (collectively, "**Third-Party Products**"). If Client does not agree to abide by the applicable terms for any such Third-Party Products, then Client should not install or use those Third-Party Products.

2.6 Sharing of Client Data. Client and Authorized Users may be required to provide certain information or data to the Company to enable the provision of the Services (for example, business emails, employment information, or other identifiers of Authorized Users to assist in access to the Services, among other similar information). In addition, Client and Authorized Users may also voluntarily choose to provide this information and data to the Company during the course of their access to the Services (collectively, all such data being "**Client Data**"). The Company acknowledges that, as between the Company and Client, Client and its Authorized Users (for their Personal Data) own all right, title, and interest, including all intellectual property and data privacy rights, in and to the Client Data. For purposes of the Services, Client grants the Company a non-exclusive, worldwide, royalty-free right and license to any intellectual property or other rights underlying the Client Data that are necessary for the Company to perform and support the Services. To the extent that any Client Data must be or is voluntarily shared by Client in connection with the Services, Client shall be solely responsible for lawfully collecting and establishing the legal basis for sharing with the Company all Client Data (including, without limitation, Personal Data included therein).

3. CONFIDENTIALITY; OWNERSHIP RIGHTS; DATA PRIVACY.

3.1 Confidentiality of Information. Each party receiving information under this Agreement (the "**Receiving Party**") understands that the party disclosing the information (the "**Disclosing Party**") has disclosed as of the Effective Date (defined below) or may disclose confidential and non-public technical, proprietary, operational, or financial information relating to the Disclosing Party's business, internal staff, clients and vendors, and services and products (collectively, the "**Confidential Information**"). For purposes of this Agreement, (i) Confidential Information of the Company includes non-public or proprietary information regarding features, functionality, and performance of the Services and its underlying systems; and (ii) Confidential Information of Client includes Client Data. Confidential Information of the Parties does not include information that, at the time of disclosure is: (A) in the public domain without breach of the terms of this Agreement; (B) known to the Receiving Party at the time of disclosure without breach of the

terms of this Agreement; (C) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (D) independently developed by the Receiving Party, in accordance with applicable law and without breach of the terms of this Agreement.

(i) In connection with receipt of any Confidential Information, the Receiving Party acknowledges and agrees during the Services Period and any Renewal Period, and for a period of three (3) years thereafter (subject to longer retention periods for any Personal Data included therein): (A) to take commercially reasonable precautions to protect the confidentiality and secure nature of all Confidential Information of the Disclosing Party; (B) not to use or divulge to any third person any such Confidential Information, except as permitted under the terms of this Agreement; and (C) to restrict disclosure to the Receiving Party's employees, representatives, officers, staff, service providers, or other agents who have a reasonable need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations under this Agreement.

(ii) Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required to: (A) comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (B) establish a party's rights under this Agreement.

(iii) On the expiration or termination of this Agreement or upon the Disclosing Party's earlier request, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed.

3.2 Ownership Rights. The Company retains all rights not expressly granted to Client in this Agreement. In particular, the Company shall own and retain all right, title, and interest in and to: (i) the Services, all improvements, enhancements, or modifications thereto; (ii) any software, applications, inventions, features, or other technology developed in connection with the Services; (iii) any suggestions or feedback provided to the Company by Client; and (iv) all intellectual property or other applicable rights related to any of the foregoing.

3.3 Use of Aggregated Data. The Company shall have the right to collect and analyze data and information related to Client's use of the Services that is used by Company in an aggregate and anonymized manner as set out in this Section (the "**Aggregated Data**"). As between the Company and Client, all right, title, and interest in Aggregated Data—provided that it cannot identify Client, any Authorized User, or Client's Confidential Information—belong to and are retained solely by the Company for support, enhancement, and provision of the Services. Client acknowledges that the Company will be free (during and after the Services Period) to: (i) use Aggregated Data to improve and enhance the Services and for other development, diagnostic, and corrective purposes in connection with the Services and other Company ventures; and (ii) disclose Aggregated Data in connection with the Company's business, subject to any applicable privacy laws, and use the Aggregated Data for any other lawful purpose.

3.4 Processing of Personal Data.

(i) **Company Obligations.** The Company agrees to collect and process Client Data (including Personal Data, as defined below) only as a service provider and processor acting on behalf of Client. The Company will not directly or indirectly sell any Client Data or retain, use, or disclose any Client Data for any reason other than for the purpose of providing the Services to Client and Authorized Users under the terms of this Agreement (consistent with the Company's [Privacy Policy](#)). In providing the Services, the Company will exercise commercially reasonable efforts to limit Client Data collection, use, retention, and disclosure to activities reasonably necessary and proportionate to achieve the purposes of this Agreement or another compatible purpose permitted by applicable law.

(ii) **Processing under DPA.** To the extent the Company may receive, maintain, use, or disclose Personal Data on behalf of Client in circumstances or with respect to Personal Data that is subject to strict U.S. consumer privacy laws (such as CCPA and CPRA) or international data protection laws (such as GDPR) that require a formal data processing agreement, Client acknowledges and agrees that the Company shall engage in processing all Client Data and Personal Data subject to the terms of the Company's standard data processing agreement (the "**DPA**") (available [here](#)), which DPA is incorporated into the terms of this Agreement to the extent necessary.

(iii) For purposes of this Agreement, "**Personal Data**" means all personal data and information that (A) is defined as "personal data" or "personal information" under applicable data protection or consumer privacy laws and (B) is provided by Client to the Company (directly or indirectly) for processing, use, or storage as a part of the Company's provision of the Services to Client and its Authorized Users.

3.5 Security Measures. The Company maintains industry standard technical and organizational measures to secure its systems and prevent unauthorized access to or use of the Services and to protect Client Data (including Personal Data) against accidental loss, corruption, and Data Breaches (defined below). The parties acknowledge that Company shall not be liable for any loss, destruction, alteration, unauthorized disclosure, or corruption of Client Data caused by any third party or Third Party Products outside the Company's control. In the event of any Data Breach relating to Client Data, the Company will, consistent with and to the extent permitted by applicable law, notify Client of the Data Breach as soon as reasonably practicable after the Company becomes aware of the Data Breach and implement an incident response plan in accordance with accepted industry standards. For purposes of this Agreement, "**Data Breach**" means: (i) any unauthorized access to or disclosure of Client Data; and (ii) any act or omission that materially compromises the security, confidentiality, or integrity of Client Data (including Personal Data) or the physical, technical, administrative, or organizational safeguards put in place by the Company with respect to the Client Data.

4. PAYMENT AND FEES.

4.1 Access Fees. Client will pay the Company the total access fee for the Services (the "**Access Fee**") in accordance with the payment terms, quantities, and unit pricing set forth in the order form delivered by the Company. Please review your order form carefully, as it may include

unique payment models and minimum pricing amounts, including: (i) a total price per month that calculates your Access Fee based on the number of Authorized Users for which you are purchasing Services access (for example, 80 Authorized Users at \$4.00 per month would equal an Access Fee of \$320.00 per month); (ii) a flat monthly, annual, or multi-year Access Fee that does not designate the number of Authorized Users for which you are purchasing Services access (in this scenario, you might see your quantity as “1” in the order form, with the total Access Fee being your flat monthly, annual, or multi-year subscription amount); or, as necessary, (iii) a minimum pricing amount the Company will bill to you in the event you fail to upload or provide access to the number of Authorized Users specified on the order form.

4.2 Changes to Access Fee; Rate Increase. During the Services Period and any applicable Renewal Period, and subject to any minimum pricing levels in your order form and the limitations in this Section, Client understands and acknowledges its number of Authorized Users may change in response to hirings or terminations of Authorized Users. Based on those staffing changes, the Access Fee will also adjust as follows:

(i) For any month-to-month Services Period, the Access Fee will adjust upward or downward—but never below any minimum pricing—to track with your current number of Authorized Users, effective as of notice to the Company of the change in your number of Authorized Users. For example, but not as a binding provision herein, if your Authorized Users decreased from 80 to 79 during the then-current monthly Services Period, your next monthly Access Fee would also decrease, on a per-unit basis, once the Company receives notice of the change.

(ii) For any annual or multi-year Services Period (and Renewal Periods), the Access Fee will only adjust upward, but not downward, if your current number of Authorized Users increases by 20% or more from the number of Authorized Users identified in your Order Form, at which point the Access Fee adjustment will match the percentage increase in your Authorized Users on an equal basis. For example, but not as a binding provision herein, if your Authorized Users is set at 80 in the initial Order Form, an increase to the Access Fee would only trigger if that number increases to 96 or more. For avoidance of doubt, increases under the 20% collar will not trigger any adjustment to the Access Fee. However, as an express limitation on this Section, you acknowledge and agree the number of Authorized Users initially permitted to access and use the Services at the beginning of the Services Period through platform onboarding **must not** exceed the number of Authorized Users identified in your Order Form for at least a period of thirty (30) days from the Effective Date.

The Company reserves the right to change the per-unit pricing of your Access Fee in any of the following scenarios: (a) by a six percent (6%) increase, calculated against the most recent per-unit pricing, at the end of each year during an annual or multi-year Services Period or your then current Renewal Period (if any), which rate increase shall take effect automatically at the start of your next Renewal Period or the next year of the multi-year Services Period, as applicable, unless expressly waived by the Company (which waiver may be sent by email); (b) by an increase of more than six percent (6%) at the end of each year during an annual or multi-year Services Period or any Renewal Period so long as the Company provides you with notice of the increase no later than fifteen (15) days before the expiration of the applicable

period and an opportunity to terminate this Agreement should you not agree to the Access Fee increase in excess of six percent (6%); or (c) if a reduction in the number of Authorized Users for the next Renewal Period takes place or Client requests a shorter Services Period for any renewal of this Agreement, then the parties shall negotiate an updated Access Fee (including, as applicable, the per-unit pricing portion based on the reduced number of Authorized Users) at or before the time of renewal.

If Client believes the Company has billed Client incorrectly (either at the time of the Order Form or during the Services Period), Client must contact the Company no later than thirty (30) days after the first billing statement in which the error or problem appeared in order to receive an adjustment or correction. Inquiries concerning fees and billing should be directed to the Company's billing department or Client's designated account manager.

4.3 Reward Fees and Rewards Billing. Client acknowledges that the Company will include on its invoices a statement of all fees and amounts paid by the Company relating to the gift cards, merchant processing fees, and other employee recognition rewards ("**Rewards**") that Authorized Users redeem through use of the Services (such fees, the "**Reward Fees**"). Client will pay and reimburse the Company for the Reward Fees described in each invoice according to the provisions of this Section 4. If Client has any disputes concerning the Reward Fees, Client must promptly contact the Company and provide a reasonable description of the dispute along with supporting evidence. The Company may be subject to additional fees to its service providers in the event of a dispute from client concerning Reward Fees. Accordingly, you agree to reimburse the Company for any additional fees that result from a dispute that proves to be false or is the result of a breach or failure on the part of Client. Absent notice of a dispute, unpaid Reward Fees shall be subject to the late fee described in Section 4.4 below.

Client, at its election and in concert with the Company's account manager, may select one of the following options to pay and satisfy its obligations for the Reward Fees due to the Company during the Services Period:

(i) **Pay As You Go (default payment method).** Under the pay as you go payment option ("**Pay As You Go**"), Client will file and upload to its Client Account, in advance, a payment method that the Company will use to automatically satisfy accrued Reward Fees according to this subsection 4.3(i). Upon subscribing to the Services, Client will elect through its Client Account: (A) Client's initial balance for Pay As You Go and (B) an amount to which Client's Pay As You Go balance will automatically update and refill through the Company charging Client's selected payment method (the "**Refill Amount**"). The Company will use the Pay As You Go funds in the Client Account to automatically satisfy Reward Fees as they accrue during the Services Period, sending an invoice and receipt to Client's email contact(s) set forth in the Client Account. At any time during the Services Period when the Pay As You Go balance falls below 20% of the Refill Amount, the Company will charge Client's selected payment method to return the balance to the full Refill Amount. If Client fails to input an initial balance for Pay As You Go, Client's selected payment method will be automatically charged for the Reward Fees as they accrue.

(ii) **Post-Pay (please contact Company's account manager).** Under the post-pay payment option ("**Post-Pay**"), Client must make a one-time 20% security deposit (minimum of \$100) of

Client's estimated, annual Reward Fees with the Company to enable Reward redemptions under the Client Account. In making the Post-Pay deposit, Client will also file and upload to the Client Account a payment method that the Company will charge on the first day of each month during the Services Period for all Reward Fees accrued in the prior month. The Company, and its applicable account manager, will (upon request from Client) work in good faith with the Client to help estimate Client's annual Reward Fees for calculation of the Post-Pay deposit amount.

Subject to Section 5.5 below, under both Pay As You Go and Post-Pay, all funds in the Client Account (including Refill Amounts and the Post-Pay deposit) are fully refundable to Client on termination of this Agreement; provided, however, such funds may be used by the Company to offset unpaid Access Fees that are not in dispute between the parties. As a convenience to Client, the Company provides non-binding guidance on its Rewards billing, at the following link: [Rewards Billing](#). The information contained in the preceding link is provided by the Company only as a convenience to the Client and does not create any binding representations, warranties, or covenants on the part of the Company.

4.4 Late Fees. Unpaid Access Fees and unpaid Reward Fees are subject to a finance charge of 1.5% per month on any outstanding, unpaid balance, together with all expenses of collection (as outlined in Section 9.7), and may result in (i) a Services Suspension under Section 1.5 or (ii) termination of Services and this Agreement as set out in Section 5.2 below.

4.5 Taxes. All Access Fees (including Reward Fees) payable by Client under this Agreement are exclusive of taxes and similar assessments. In general, Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any fees and amounts payable by Client hereunder, other than any taxes imposed on the Company's income.

5. TERM AND TERMINATION.

5.1 Services Period. Subject to earlier termination as provided below, the Services period of this Agreement (the "**Services Period**") begins on the Effective Date set forth in Client's order form (the "**Effective Date**") and continues for the monthly, annual, or multi-year subscription timeframe described therein. Except as otherwise agreed to or waived in Client's order form, any annual or multi-year Services Period will automatically renew for successive one (1) year periods (each, a "**Renewal Period**") unless either party gives the other party written notice of termination (which may be through email) at least thirty (30) days before the expiration of the then-current Services Period or Renewal Period. As a direct limitation to the preceding sentence, automatic Renewal Periods do not apply to any monthly Services Period agreed to by the parties in the order form. Client acknowledges and understands that its Access Fees payable during any Renewal Period shall be subject to the rate increase described in Section 4.2 above.

5.2 Termination for Nonpayment. In addition to any other express termination or suspension right set forth in this Agreement, the Company may terminate this Agreement, effective immediately on written notice to Client, if Client fails to pay any Access Fee or Reward Fee when due hereunder, and such failure continues more than fifteen (15) days after the Company's delivery of an initial written notice of nonpayment.

5.3 Mutual Termination for Cause. Each of Client and the Company (the “**Non-Breaching Party**”) may terminate this Agreement, effective on written notice to the other party (the “**Breaching Party**”), if the Breaching Party materially breaches the terms of this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the Non-Breaching Party provides the Breaching Party with written notice of the alleged breach. In addition, the Non-Breaching Party may terminate this Agreement, effective immediately upon written notice to the Breaching Party, if the Breaching Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

5.4 Mutual Termination for Convenience. Subject to the limitations in this Section 5.4, either party may terminate this Agreement, for any or no reason, on thirty (30) days’ advance written notice to the non-terminating party; *provided, however*, that termination for convenience under this Section is only available to Client for month-to-month Services Periods, and not for any prepaid annual or multi-year Services Periods or Renewal Periods (for which all Access Fees are paid in advance). In addition, without the Company’s written consent, any month-to-month Services Period may not be terminated by the Client pursuant to this Section during the first ninety (90) days following the Effective Date.

5.5 Effect of Termination on Prepaid Amounts. If this Agreement is terminated by Client for cause or convenience according to this Section 5 or by the Company for convenience according to Section 5.4, the Company will refund to Client any prepaid Access Fees (plus any Refill Amounts and Post-Pay deposits set out in Section 4.3 above) covering any portion of the Services Period remaining after the effective date of termination. Notwithstanding the foregoing, the parties acknowledge and agree that: (i) no refunds will be granted by the Company to Client for the then-current month of the Services Period and the Access Fee due thereunder; and (ii) Client shall not be entitled to any refund if termination of this Agreement is due to termination for cause by the Company according to Section 5.3.

5.6 Survival. All sections of this Agreement which by their nature should survive termination will survive termination or expiration of this Agreement, including, without limitation, accrued rights to payment (Section 4), confidentiality obligations (Section 3.1), ownership of intellectual property (Section 3.2), data privacy provisions (Section 3.4), warranty disclaimers (Section 6), indemnification (Section 7), and limitations of liability (Section 8).

6. LIMITED WARRANTY AND DISCLAIMER.

6.1 Limited Warranty. As of the Effective Date, the Company represents and warrants to Client that the Services will conform in all material respects with applicable laws and that the Company owns (or has received necessary rights to use) the intellectual property and other rights necessary to provide the Services to Client.

6.2 DISCLAIMER. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. THE COMPANY DOES NOT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES BY CLIENT AND ITS AUTHORIZED USERS. THE SERVICES ARE PROVIDED “AS IS” AND “AS ACCESSED”, AND EXCEPT AS EXPRESSLY INDICATED IN THIS AGREEMENT, THE COMPANY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THE COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

THIS SECTION IS SUBJECT TO ALL APPLICABLE LAWS THAT MAY PROHIBIT THE DISCLAIMERS AND WAIVERS DESCRIBED HEREIN, PROVIDED THAT THE INVALIDITY OF ANY STATEMENT IN THIS SECTION SHALL NOT SERVE TO INVALIDATE ANY OTHER PROVISION OF THIS AGREEMENT.

7. INDEMNIFICATION.

7.1 Company Indemnification. The Company shall indemnify, defend, and hold harmless Client from and against any and all losses, damages, liabilities, costs (including reasonable attorneys’ fees) (“**Losses**”) incurred by Client resulting from any third-party claim, suit, action, or proceeding (“**Third-Party Claim**”) that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates a third party’s intellectual property rights, provided that Client promptly notifies the Company in writing of the Third-Party Claim, cooperates with the Company in relation to the Third-Party Claim, and grants the Company sole authority to control the defense and settlement of such Third-Party Claim.

7.2 Exclusions from Company Indemnity Obligations. The obligations in Section 7.1 do not apply with respect to portions or components of the Service: (i) not supplied by Company; (ii) that are modified without the express consent or involvement of the Company; (iii) combined with other products, processes, or materials where the Third-Party Claim relates to such combination; (vi) where Client continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (v) where Client’s use of the Services is not strictly in accordance with this Agreement.

7.3 Client Indemnification. Client shall indemnify, hold harmless, and, at the Company’s option, defend the Company from and against any Losses resulting from (i) any Third-Party Claim alleging the Client Data, or any use of the Client Data by the Company in accordance with this Agreement, infringes or misappropriates any third party’s intellectual property or privacy rights and (ii) any Third-Party Claim based on Client’s or any Authorized User’s: (A) negligence or willful misconduct; (B) use of the Services in a manner not authorized by this Agreement; (C) use of the Services in combination with data, software, hardware, or Equipment not provided by the Company or authorized by the Company in writing; or (D) modifications to the Services not made by the Company. Client shall, at all times, keep the Company reasonably informed as to any Third-Party Claim against the Company that Client assumes the defense of under this Section (which defense must be consented to in advance by the Company).

8. LIMITATION OF LIABILITY.

IN NO EVENT WILL THE COMPANY BE LIABLE UNDER THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY NOT CAUSED BY THE COMPANY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER THE COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR SUCH LOSSES WERE OTHERWISE FORESEEABLE TO THE PARTIES. IN NO EVENT WILL THE COMPANY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY EXCEED THE TOTAL AMOUNTS AND FEES PAID AND AMOUNTS AND FEES ACCRUED BUT NOT YET PAID TO THE COMPANY UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR LOSSES.

9. MISCELLANEOUS.

9.1 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

9.2 Assignment. This Agreement is not assignable, transferable, or sublicensable by Client except with Company's prior written consent, in light of the Services being offered and sold under terms unique to Client. The Company may transfer and assign, whether by operation of law, merger, direct assignment, or otherwise, any of its rights and obligations under this Agreement without consent of Client, provided that such assignment does not materially impact the rights of Client and its Authorized Users to continue to use the Services.

9.3 Entire Agreement; Amendment. This Agreement, including the DPA (as applicable) and policies of the Company incorporated herein, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the Services. All waivers, amendments, and modifications to this Agreement must be in writing and signed by both parties to be enforceable by the parties (except as expressly permitted hereunder, including with respect to updates described in Section 1.3 and Section 9.10).

9.4 Relationship. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and Client does not have any authority of any kind to bind the Company in any respect whatsoever.

9.5 Notice. All notices, requests, and other communications under this Agreement must be in writing and addressed to the other party at its address or email set forth herein or in the online order form between the parties, and a notice under this Agreement is effective only on receipt by the receiving party.

9.6 Governing Law. This Agreement and the Services provided to Client are governed by Utah law (without regard to its conflict of laws provisions), and Client agrees that any dispute shall be brought exclusively by the parties in Utah's Third District Court or in the United States District Court for the District of Utah. CLIENT EXPRESSLY WAIVES (i) ANY OBJECTION TO THE JURISDICTION OF SAID COURTS AND (ii), TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY IN ANY DISPUTE OR CLAIM UNDER THIS AGREEMENT.

9.7 Right to Fees (Limited). If any Access Fees, Reward Fees, or other amounts due and payable under this Agreement are referred by the Company to an attorney or third party debt collection agency for collection, Client agrees to be responsible for all collection costs, reasonable attorney's fees, court costs, and a collection fee as allowed by applicable law (including, without limitation, Utah Code § 12-1-11).

9.8 Publicity. Client agrees to reasonably cooperate with the Company to serve as a reference account upon request, and hereby grants the Company a license and right to display Client's name and logo on its website and other marketing and sales materials to communicate that Client is a customer of the Company.

9.9 Compliance with Laws. Client and the Company shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary licenses or approvals), that relate to their respective performance under this Agreement, including, without limitation, all export laws and applicable data privacy laws with respect to the Services.

9.10 Updates to Linked Agreement. The Company may revise and update the online, linked version of this Agreement to implement changes and modifications from time to time in the Company's sole discretion (for example, to update billing procedures or the general description of the Services). All changes and modifications are effective immediately when the Company posts them to the link under which this Agreement can be found; provided, however, the changes and modifications the Company implements will only serve to bind Client to the extent: (i) Client is notified of the changes; and (ii) Client either consents to the changes or, alternatively, continues to use the Services after receipt of the Company's notice. Any changes or modifications to this Agreement under this Section will not apply retroactively.